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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,184	09/21/2000	Kyoko Matsumoto	TAK-140-USAP	9127

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Ronald R Snider
PO Box 27613
Washington, DC 20038-7613

EXAMINER

BLECK, CAROLYN M

ART UNIT PAPER NUMBER

3626

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/666,184

Applicant(s)

MATSUMOTO ET AL.

Examiner

Carolyn M Bleck

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment filed 12 April 2004. Claims 1-8 are pending. Claims 1 and 6 have been amended.

Requirements for Information

2. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.
3. The information is required to extend the domain of search for prior art. Limited amounts of art related to the claimed subject matter are available within the Office, and are generally found in class 382 and subclass 100, which describe applications for image analysis. A broader range of art to search is necessary to establish the level of those of ordinary skill in the claimed subject matter of obtaining an average face composition of a plurality of races, determining data for color maps and image maps for a plurality of races, and obtaining color information in order to find matching eye shadow and rouge colors.
4. In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated in

the requirement, or where such subject matter is not indicated, the subject matter found in applicant's disclosure.

5. The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

6. The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete reply to the requirement for that item.

7. This requirement is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete reply to this requirement. The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Utsugi (6,502,583).

(A) As per claim 1, Utsugi discloses a makeup method for applying makeup (col. 10 lines 59-60) comprising:

(a) determining an average face for each race from a plurality of faces through image processing wherein the eye brows, eyes, a nose, and a mouth are used to determine the average or ideal face (col. 1 line 13 to col. 2 line 50, col. 7 lines 1-55, col. 8 lines 8-22, col. 10 lines 1-41);

(b) asking a subject person specific questions to determine the impression of an average or ideal face, wherein the asking is performed on multiple people (col. 1 line 52 to col. 2 line 14, col. 8 lines 8-24);

(c) based on the questions, determining a desirable face and performing image processing on an image of a face thereby forming images of imagined post-makeup faces, wherein a segment of the image of the post makeup face undergoes image processing to determine a plurality of bright areas and dark areas (reads on "image map" and "color map") (col. 4 lines 41-55, col. 5 lines 5-40, col. 8 lines 8-24, col. 8 line 65 to col. 9 line 38); and

(d) acquiring color data for the segmented areas (reads on "color map"), wherein based upon the obtained color data of each area, a foundation to be applied on that area is determined (Fig. 4, col. line 65 to col. 9 line 38, col. 10 lines 1-42).

As per the recitation of a "color map", it is respectfully submitted that the segmentation of the data discussed above is considered to be used as data "for a color map", and the skilled artisan would have found this an obvious modification to the method of Utsugi with the motivation of properly analyzing color data to determine the proper foundation or makeup for a person (Utsugi; col. 4 lines 41-55).

As per the recitation of "eye shadow and rouge", it is respectfully submitted that Utsugi discloses finding makeup for a person, and therefore, it would have been obvious to include "eye shadow and rouge" which is a type of makeup. The motivation being to determine the best possible makeup match for a particular person.

(B) As per claim 2, Utsugi discloses obtaining information based on each race (col. 8 lines 8-22). The remainder of claim 2 repeats the same limitations as claim 1, and is therefore rejected for the same reasons, and incorporated herein (note the discussion of "color maps").

(C) As per claim 3, Utsugi discloses the color data including eye color (col. 3 lines 1-64) and displaying faces which are ideal (reads on "obtaining maps where desirable images are clarified for selection") (Fig. 3a-4, col. 3 line 1 to col. 4 line 55). The remainder of

claim 2 repeats the same limitations as claim 1, and is therefore rejected for the same reasons, and incorporated herein (note the discussion of "color maps").

(D) As per claim 4, Utsugi includes the color data consisting of hue and brightness (reads on "tone"), and is displayed in a chart with a horizontal and vertical axes (Fig. 1, col. 2 lines 30-35, col. 4 lines 41-55, and col. 7 lines 3-60). The remainder of claim 4 repeats the same limitations as claim 1, and is therefore rejected for the same reasons, and incorporated herein (note the discussion of "color maps").

(E) As per claim 5, Utsugi fails to expressly disclose color maps comprise charts having a horizontal axis expressing an image of "Active- Gentle" and a longitudinal axis expressing an image of "Fresh-Elegant." However, as disclosed above in the rejection of claim 4, Utsugi discloses the color data consisting of hue and brightness (reads on "tone"), and is displayed in a chart with a horizontal and vertical access (Fig. 1, col. 2 lines 30-35, col. 4 lines 41-55, and col. 7 lines 3-60).

It is respectfully submitted that using charts to display changes or variations in color is a technique typically used, and the skilled artisan would have found it an obvious modification within the method of Utsugi with the motivation of providing to consumers the effects of different color cosmetics on their faces and obtaining color data of each area to determine foundation to apply to those areas (Utsugi; col. 9 lines 8-11).

(F) As per claim 6, Utsugi discloses using a morphing program (col. 7 lines 1-55).

(G) As per claims 7 and 8, Utsugi discloses the coordinate values of facial constituents including eyebrows, eyes, a nose, and a mouth (col. 7 lines 15-27).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied prior art teaches a rebirth of a nation, computer-style (Time magazine) and a method for selecting suitable hair-style and image-map for hair-style (6,333,985).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Bleck whose telephone number is (703) 305-3981. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm, and from 8:30am – 5:00pm on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached at (703) 305-9588.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 306-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

12. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

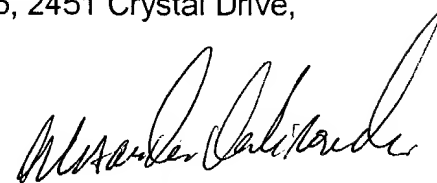
(703) 872-9306 or (703) 872-9326 [Official communications]

(703) 872-9327 [After Final communications labeled "Box AF"]

(703) 746-8374 [Informal/ Draft communications, labeled
"PROPOSED" or "DRAFT"]

Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th Floor (Receptionist).

CB
July 7, 2004



ALEXANDER KALINOWSKI
PRIMARY EXAMINER

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